

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:00-00005-02

LUCIUS MERRITT ROGERS

MEMORANDUM OPINION AND ORDER

Pending is defendant's "Motion Under Rule 60(b)(4)(6) and Notification Not to Construe Motion as a 2255 and File This Motion As Is Under the Supreme Court Ruling Under Blakely vs. Washington[,] " filed January 31, 2008. The motion was previously referred to Mary E. Stanley, United States Magistrate Judge, who has submitted her Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

The court has reviewed the Proposed Findings and Recommendation entered by the magistrate judge on March 18, 2008. The magistrate judge recommends defendant's motion be denied based upon the same grounds for denial of an earlier, identical motion by defendant, namely, that Rule 60(b) may not be used as a vehicle to overturn a criminal conviction and sentence. The plaintiff has not objected to the Proposed Findings and Recommendation.<sup>1</sup> The court concludes the recommended disposition is correct.

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<sup>1</sup>Defendant was released from custody on March 17, 2008. The proposed findings and recommendation were sent initially to defendant's place of incarceration. The mailing was returned and sent anew by the Clerk on March 24, 2008, to 706 Cairns Court, Apartment 51, Charleston, West Virginia, 25312, the same address on file with the United States Probation Office for purposes of defendant's supervision.

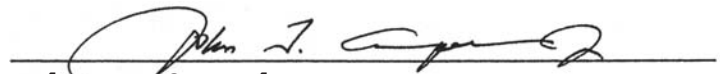
Based upon the foregoing discussion, it is, accordingly,  
ORDERED that:

1. The Proposed Findings and Recommendation be, and it  
hereby is, adopted by the court; and

2. The motion be, and it hereby is, denied.

The Clerk is directed to forward copies of this written  
opinion and order to the defendant, all counsel of record, and the  
United States Magistrate Judge.

DATED: May 20, 2008

  
John T. Copenhaver, Jr.  
United States District Judge